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EXAMINER

MILLER, WILLIAM L

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

Application Number: 09/492,032

Filing Date: January 27, 2000

Appellant(s): ACTON ET AL.

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GROUP 3600

Wayne L. Jacobs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07-17-2002.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This application originally contained claims 1-27. In a Response dated 09-20-2001, claims 1-6, 10, 15, 18-20, 24, 25, and 27 were amended, and new claims 28-47 were added. In an Official Action dated 12-18-2001, claims 1-15, 17, 19, 26, 28-31, and 43-47 were finally rejected, and claims 16, 18, 20-25, 27, and 32-42 were allowed.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-13, 17, 19, 26; and 28-31; and 43-45; and 46-47 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,727,291	BIONDO et al.	03-1998
4,962,574	ESTES	10-1990

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3,680,941	SHANKS	08-1972
2,937,765	SHANK	05-1960
5,678,289	SAAF	10-1997
5,152,161	LEE	10-1992

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. (US#5727291) in view of Estes (US#4962574), and further in view of Shanks (US#3680941).

Regarding claim 1, Biondo et al. discloses in Figs. 11-13 a casket comprising: a shell (402) and at least one cap (406) having confronting flanges; a memorabilia compartment (412) including an access opening (440) and an interior; and a removable cover (410).

Biondo et al. fails to disclose a first gasket between the confronting flanges as claimed by the appellant. Estes discloses a casket comprising a shell (12) and at least one cap (16) having confronting flanges wherein a gasket (42) therebetween provides a seal therebetween. Therefore, as taught by Estes, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. to include a gasket between the confronting flanges thereby providing a seal therebetween.

Biondo et al. fails to disclose a second gasket between the cover (410) and the cap (406) as claimed by the appellant. Shanks discloses a drawer assembly for protecting the contents therein wherein a gasket (33) is positioned between the "cap" (20) and the "cover" (37) thereby providing a seal therebetween. Therefore, as taught by Shanks, it would have been obvious to

one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. to include a gasket between the cap and the cover thereby providing a seal therebetween.

Regarding claim 2, according to col. 10, lines 42-47, Biondo et al. discloses the casket can be a full top casket having a single full length cap.

Regarding claim 3, the Biondo et al. casket includes a head end cap (404) and a foot end cap (406).

Regarding claims 4 and 5, Biondo et al. discloses the cover (410) as a face plate (428) of drawer (410).

Regarding claim 6, Biondo et al. fails to disclose a third gasket between head end cap (404) and foot end cap (406) as claimed by the appellant. Estes discloses the head end cap (14) and foot end cap (16) including a gasket (48) therebetween to provide a seal therebetween. Therefore, as taught by Estes, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. to include a gasket between the head and foot end cap to provide a seal therebetween.

Regarding claims 7-9, Biondo et al. discloses the drawer (410) being movably mounted in the access opening (440) in header wall (420) of the foot end cap (406).

Regarding claim 10 and as discussed previously with regards to claim 1, Biondo et al. fails to disclose a gasket positioned between the cover (410) and cap (406), specifically a gasket positioned against an outside surface of header wall (420) and around access opening (440). Shanks teaches the gasket (33) being positioned against an outside surface of "header wall" (29-31) and around the access opening therein thereby providing a seal between the "cover" (37) and "cap" (20). Therefore, as taught by Shanks, it would have been obvious to one of ordinary skill

in the art at the time the invention was made to modify the casket of Biondo et al. such that the gasket was positioned against an outside surface of the header wall and around the access opening thereby providing a seal between the cover and cap.

Regarding claim 11, Biondo et al. discloses a drawer support (416,418) mounted from the inside surface of header wall (420) of foot end cap (406) via brackets (442).

Regarding claim 19, Biondo et al. discloses a latch mechanism (470).

Claims 12-15 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Estes, in view of Shanks as applied to claim 1 above, and further in view of Shank (US#2937765).

Biondo et al. discloses the drawer support (416,418) being mounted via brackets (442) wherein the drawer (410) slidably engages drawer support portion (416) via a tongue and groove arrangement as opposed to the drawer support being an open-ended C-shaped channel having a drawer stop and being mounted on each lateral side thereof via a pair of C-shaped brackets wherein each bracket includes a longer leg and a shorter leg as claimed by the appellant. Shank discloses a cabinet having a slidable drawer assembly wherein the drawer support is an open-ended C-shaped channel (36) having a drawer stop means at the flared rear end thereof and being mounted on each lateral side thereof via a pair of C-shaped brackets (12,14) wherein each bracket includes a longer leg (16) and a shorter leg (26). The open-ended C-shaped channel (36) provides smooth, limited sliding engagement between the channel (36) and the drawer (46), while the brackets (12,14) each having a longer leg (16) and a shorter leg (26) allows the brackets to be reversible side-to-side of the channel (36) and end-to-end of the bracket (12,14).

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Therefore, as taught by Shank, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. such that the drawer support included an open-ended C-shaped channel having drawer stop means and was mounted on each lateral side thereof via a pair of C-shaped brackets wherein each bracket included a longer leg and a shorter leg. The open-ended C-shaped channel with drawer stop means thus providing enhanced sliding engagement between the channel and the drawer, while the brackets each having a longer leg and a shorter leg would enable the brackets to be reversible side-to-side of the channel and end-to-end of the bracket.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Estes, in view of Shanks, in view of Shank as applied to claim 12 above, and further in view of Saaf (US#5678289).

Biondo et al. fails to disclose the drawer (410) being spring biased outwardly as claimed by the appellant. Saaf discloses a casket including a drawer (40) slidably received in foot end cap (16) and biased outwardly via spring (92) thereby facilitating the outward movement thereof. Therefore, as taught by Saaf, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. such that the drawer was outwardly spring biased thereby providing a simpler means of its outward movement.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Lee (US#5152161).

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Biondo et al. fails to disclose a cam operable on an inside surface of the header wall to draw the cover (drawer) thereto as claimed by the appellant. Lee discloses a cabinet 2 and sliding drawer 6 received therein wherein cam 44 is operable on an inside surface of cabinet wall 4 to draw the drawer thereto. Therefore, as taught by Lee, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the drawer assembly of Biondo et al. to include a cam operable to draw the drawer into the header wall and effectively secure it thereto.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Lee as applied to claim 28 above, and further in view of Shanks.

As discussed previously, Biondo et al. fails to disclose a gasket between the cover (410) and the cap (406) as claimed by the appellant. Shanks discloses a drawer assembly for protecting the contents therein wherein a gasket (33) is positioned between the "cap" (20) and the "cover" (37) thereby providing a seal therebetween. Therefore, as taught by Shanks, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. to include a gasket between the cap and the cover thereby providing a seal therebetween.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Shanks.

As discussed previously, Biondo et al. fails to disclose a gasket between the cover (410) and the cap (406) as claimed by the appellant. Shanks discloses a drawer assembly for

protecting the contents therein wherein a gasket (33) is positioned between the “cap” (20) and the “cover” (37) thereby providing a seal therebetween. Therefore, as taught by Shanks, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. to include a gasket between the cap and the cover thereby providing a seal therebetween.

Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Shanks as applied to claim 43 above, and further in view of Lee.

As discussed previously, Biondo et al. fails to disclose a latching mechanism to move the cover to the header wall as claimed by the appellant. Lee discloses a cabinet 2 and sliding drawer 6 received therein wherein a latching mechanism 44 is operable on an inside surface of cabinet wall 4 to draw the drawer thereto. Therefore, as taught by Lee it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the drawer assembly of Biondo et al. to include a latching mechanism to draw the drawer into the header wall and effectively secure it thereto.

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Saaf, and further in view of Shanks.

As discussed previously, Biondo et al. fails to disclose the drawer (410) being spring biased outwardly as claimed by the appellant. Saaf discloses a casket including a drawer (40) slidably received in foot end cap (16) and biased outwardly via spring (92) thereby facilitating the outward movement thereof. Therefore, as taught by Saaf, it would have been obvious to one

of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. such that the drawer was outwardly spring biased thereby providing a simpler means of its outward movement.

Further, as discussed previously, Biondo et al. fails to disclose a gasket positioned between the cover (410) and cap (406), specifically a gasket positioned against an outside surface of header wall (420) and around access opening (440). Shanks teaches the gasket (33) being positioned against an outside surface of "header wall" (29-31) and around the access opening therein thereby providing a seal between the "cover" (37) and "cap" (20). Therefore, as taught by Shanks, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the casket of Biondo et al. such that the gasket was positioned against an outside surface of the header wall and around the access opening thereby providing a seal between the cover and cap.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biondo et al. in view of Saaf, in further view of Shanks, as applied to claim 46 above, and further in view of Lee.

As discussed previously, Biondo et al. fails to disclose a latching mechanism to move the cover to the header wall as claimed by the appellant. Lee discloses a cabinet 2 and sliding drawer 6 wherein latching mechanism 44 is operable on an inside surface of cabinet wall 4 to draw the drawer thereto. Therefore, as taught by Lee it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the drawer assembly of Biondo et al. to include a latching mechanism to draw the drawer into the header wall and effectively secure it thereto.

(11) Response to Argument

Regarding "Issues 1-3 and 5-9" as identified on pages 5-6 of the brief, the appellant argues Shanks is not of the same field of endeavor of the appellants' invention, namely caskets. The examiner acknowledges Shanks discloses a food storage compartment for a refrigerator which is not of the same field of endeavor of the appellants' invention, namely caskets, however Shanks is of a similar problem solving area, namely drawer assemblies slidably received within a housing and sealable thereto. Consequently, as a matter of law, Shanks is analogous with the appellants' invention.

It has been held that a prior art reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In cases involving relatively simple everyday-type mechanical concepts, it is reasonable to permit inquiry into other areas where one of even limited technical skill would be aware that similar problems exist. See *In re Heldt* 167 USPQ 676.

The determination that a reference is from a nonanalogous art is two-fold. First, we decide if the reference is within the field of inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. See *In re Wood* 202 USPQ 171.

The appellant argues element (20) of Shanks is not a "cap" as claimed, nor is element (29-31) of Shanks a "header wall" as claimed. The examiner acknowledges Shanks discloses a slidable drawer assembly for a refrigerator as opposed to a slidable drawer assembly for a casket,

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however, the examiner has merely labeled the elements of the Shanks structure as such for referencing the respective elements of the appellants' claimed invention.

The appellant further argues the examiner provides no motivation or suggestion to combine Shanks with the base reference of Biondo et al. The examiner disagrees as the motivation to combine Shanks with Biondo et al. has been clearly given as to provide a seal between the cap (406) and cover (410) thereby protecting the drawer contents.

Regarding "Issues 2 and 3", the appellant argues Shank is not of the same field of endeavor of the appellants' invention, namely caskets. The examiner acknowledges Shank discloses a sliding shelf structure which is not of the same field of endeavor of the appellants' invention, namely caskets, however Shank is of a similar problem solving area, namely sliding mechanisms for pull out devices. Consequently, as a matter of law, Shank is analogous with the appellants' invention.

It has been held that a prior art reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In cases involving relatively simple everyday-type mechanical concepts, it is reasonable to permit inquiry into other areas where one of even limited technical skill would be aware that similar problems exist. See *In re Heldt* 167 USPQ 676.

The determination that a reference is from a nonanalogous art is two-fold. First, we decide if the reference is within the field of inventor's endeavor. If it is not, we proceed to

determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. See *In re Wood* 202 USPQ 171.

The appellant argues Shank fails to disclose a "cabinet" as indicated by the examiner. The examiner disagrees as Shank discloses the sliding mechanism being mounted to cabinet side walls (18). Likewise, the appellant argues Shank fails to disclose a "slidable drawer assembly" and "drawer support" as indicated by the examiner. The examiner acknowledges Shank discloses a slidable shelf structure as opposed to a slidable drawer assembly, however, the examiner has merely labeled the elements of the Shank structure as such for referencing the respective elements of the appellants' claimed invention.

The appellant argues the examiner provides no motivation or suggestion to combine Shank with the base reference of Biondo et al. The examiner disagrees as the motivation to combine Shank with Biondo et al. has been clearly given as to provide enhanced sliding of the drawer and reversible brackets.

Regarding "Issues 4, 5, 7, and 9", the appellant argues Lee is not of the same field of endeavor of the appellants' invention, namely caskets. The examiner acknowledges Lee discloses a cam lock for a desk drawer which is not of the same field of endeavor of the appellants' invention, namely caskets, however Lee is of a similar problem solving area, namely drawer locking mechanisms. Consequently, as a matter of law, Lee is analogous with the appellants' invention.

It has been held that a prior art reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the

appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In cases involving relatively simple everyday-type mechanical concepts, it is reasonable to permit inquiry into other areas where one of even limited technical skill would be aware that similar problems exist. See *In re Heldt* 167 USPQ 676.

The determination that a reference is from a nonanalogous art is two-fold. First, we decide if the reference is within the field of inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. See *In re Wood* 202 USPQ 171.

The appellant argues Lee fails to disclose a "cabinet" as indicated by the examiner. The examiner acknowledges Lee discloses a lockable desk drawer as opposed to a lockable cabinet drawer, however the examiner has merely labeled the elements of the Lee structure as such for referencing the respective elements of the appellants' claimed invention. In any event, a desk having drawers, by definition, can be viewed as a cabinet.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

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September 13, 2002

Conferees

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